



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: William E. James Examiner: Tam Nguyen
Application No: 09/674,996 Art Unit: 3764
Filing Date: 11/02/2000 Confirmation No: 1327
Title: Automatically Variable Stride Walk-Run-Stepper Exerciser

APPLICATION FOR PATENT TERM ADJUSTMENT

under 35 U.S.C. 154(b) and MPEP 1893.03(b) (C)

Mail Stop Issue Fee

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Dear Sir:

In response to the Notice of Allowance of 12/16/10 , the fee of \$200.00 (1.118(e)) for this application is enclosed, along with the issue fee of \$755.00 .

Referring to the Determination of Patent Term Extension, in particular the parenthetical: "application filed after June 7, 1995 but prior to May 29, 2000", applicant notes that this application's "actual filing date" per MPEP 1893.03(b), exception (C) is Nov. 2, 2000 which is after May 29, 2000 .
(cont'd. pg. 2)

I hereby certify that this correspondence is being deposited with the

U.S. Postal Service as first class mail addressed as above on 3/15/11.

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William E. James

William E. James
3/15/2011

Please note that both the Notice of Allowance and Determination of Patent Term Extension forms sent to me show a filing date of 11/02/2000 , so there is an obvious discrepancy with the “.... prior to May 29, 2000” on the same page.

My Filing Receipt shows a Filing Date of 11/02/2000 and states that “This application is a 371 ...” . In 1803.03(b), exceptions: (C) “Patent term adjustment under 35 U.S.C. 154(b) ... when the USPTO has failed to issue a patent within three years of the “actual filing date”... . In this situation, the “actual filing date” is the date the national stage commenced under 35 U.S.C. 371” .

Applicant’s attorney at the time evidently had missed a deadline and the PCT application had become abandoned. The attorney filed a Petition to Revive the U.S. application (only) (applicant had wasted over \$4,000.), which petition was granted, resulting in the “371 date” of Nov. 2, 2000 .

The basis under 1.702 then is 1.702(b) “Failure to issue a patent within three years of the actual filing date” . Under this basis , applicant believes the term extension should be: 7 years, 4 mos., 12 days assuming an issue date of Mar. 15, 2011 , the relevant dates being: Nov. 3, 2003 (3 yrs. plus 1 day after “actual filing date”) and Mar. 15, 2011 .

The patent is not subject to a terminal disclaimer.

There were no circumstances where applicant failed to engage in reasonable efforts to conclude processing or examination of the application per 1.704 .

Looking back at the various delays, the first Office Action (10/30/02) came two years after the 11/02/2000 filing.

The major cause of delay resulted from an obvious error in the O.A.

(12/01/03) and the examiner's refusal to admit this important error (after many phone calls to him and Supervisor). Thus, applicant's Amendment (2/26/04) was met with "Not Entered" in O.A. (10/04/04) and "Abandoned" notice (12/13/04). A following Petition to the Director (agreed to by the Supervisor and "Special Programs Examiner" who said she took care of those) was evidently buried for months and shuffled off finally to the Petitions Office, then back to TC (after many phone calls to track it down) to be finally "Dismissed, matter for appeal" (6/21/06).

Applicant's Appeal (3/21/07) (Non-compliant) revised (6/12/07) was met with examiner reopening prosecution with New Grounds for Rejection (11/20/07), thus abdicating his position dating from 12/01/03. Applicant was obligated to again Appeal what applicant saw as a frivolous and erroneous new charge (invention not adequately explained) which the examiner again abdicated.

In sum, all the delays would have been unnecessary had the examiner not made an egregious error in Dec. '03 and continued to deny it up through the Appeal and followed up with another obvious error requiring a second Appeal.

Sincerely,

 3/15/2011
William E. James

864-400-8660

Attached: Fee (\$200 chk.) and Fee Transmittal form